

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE No. 194948  
Issued to: Robert G. STAFFNEY

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2436

Robert G. STAFFNEY

This appeal has been taken in accordance with 46 USC 7702 and 46 CFR 5.701.

By order dated 1 November 1985, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's license for one month, remitted on three months' probation, upon finding proved the charge of misconduct. The first specification found proved alleges that Appellant, under the authority of the captioned license, between 22 and 27 January 1985, wrongfully operated the vessel ZENOVIA carrying passengers for hire while the vessel was documented exclusively for pleasure, in violation of 46 CFR 67.45-19. The second specification found proved alleges that Appellant, under the authority of the captioned license, during the same time period, wrongfully operated the ZENOVIA carrying passengers for hire while liquified petroleum gas was used, in violation of 46 CFR 25.45-1(a), 46 CFR 147.03-11 and 46 CFR 147.05-100 Table S.

The hearing was held at Miami, Florida, on 1 October 1985.

Appellant was not present at the hearing. He was, however, represented by professional counsel who entered an answer of "no contest" on Appellant's behalf. The Administrative Law Judge instructed Appellant's counsel to submit subsequent to the hearing a power of attorney authorizing counsel to act on Appellant's behalf, and an affidavit authorizing Appellant's counsel to enter an answer of "no contest." These documents were submitted, and made a part of the record. (Respondent's Exh. A & B.)

The Investigating Officer introduced in evidence two exhibits.

Appellant introduced in evidence two exhibits.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specifications had been proved, and entered a written order suspending all licenses and/or documents issued to Appellant for a period of one month, remitted on three months' probation.

The complete Decision and Order was served on 6 November 1985. Appeal was timely filed and perfected on 5 December 1985.

#### FINDINGS OF FACT

At all times relevant during the period of 22-27 January 1985, Appellant was serving as operator aboard the S/V ZENOVIA under the authority of his license which authorizes him to act as operator of mechanically and sail powered passenger carrying vessels of not more than 50 gross tons upon the Atlantic Ocean, not more than 50 miles offshore, between Cape Canaveral, Florida and Key West, Florida.

The S/V ZENOVIA was documented as a pleasure vessel. During this period, the vessel had been chartered for a one-week voyage as part of a learning-to-sail operation. Ordinarily, these trips were arranged by the vessel owners under a purported bareboat charter. However, for this trip, no written agreement was executed. The ZENOVIA was equipped with an LPG stove.

#### BASES OF APPEAL

Appellant advances several arguments on appeal:

1. The attorney who represented Appellant at the hearing had been instructed not to plead "no contest."
2. The letter from the complainant<sup>1</sup> is not worthy of belief.
3. The findings are not supported by substantial evidence, since a bareboat charter covered the voyage in question.

Appearance: Appellant, pro se.

#### OPINION

##### I

Appellant first states that he is no longer represented by the attorney who represented him at the hearing, and asserts that his counsel at the hearing was instructed not to plead "no contest." This argument is not supported by the record, which contains the two Respondent's exhibits described above.

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<sup>1</sup>Coast Guard investigation into this incident was initiated as the result of a letter of complaint from one of the passengers, a copy of which was received by the Investigating Officer. The letter was not introduced in evidence.

The power of attorney executed by Appellant (Respondent's Exh. A) states, in pertinent part:

I expressly authorize my said counsel, whether or not I am present, to enter a plea on my behalf. . . .

The affidavit executed by Appellant (Respondent's Exh. B) states, in pertinent part:

1. I am the named Respondent in the above-styled case.
2. I have read or have had read to me the charges which form the basis of this proceeding and understand my rights and remedies thereunder.
3. I have authorized my attorney . . . to enter a plea of "no contest" and I understand the nature of that plea.

An Appellant who is "represented throughout the proceeding by professional counsel of his own choice, is not likely to be heard with instant sympathy when he attacks for the first time on appeal the performance of the selected counsel." Appeal Decision 2159 (MILICI). See also Appeal Decision 1948 (BONVILLIAN) (Appellant cannot be heard, months after hearing, to impeach activity of counsel of his own selection.).

## II

Appellant next contends that the letter of complaint which gave rise to the Coast Guard investigation is not worthy of belief. Since this letter is not in evidence, it will not be considered on appeal. Appeal Decision 2340 (JAFEE) and cases cited therein. See 5 USC 556(e).

## III

Finally, Appellant argues that a valid bareboat charter existed. This assertion is in direct contravention of the answer entered on Appellant's behalf at the hearing. An answer of "no contest" eliminates any factual controversy and is sufficient to support a finding of "proved" by the Administrative Law Judge, 46 CFR 5.527(c). Appeal Decision 2268 (HANKINS). See Appeal Decisions 2362 (ARNOLD) and 2376 (FRANK).

## CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative

Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision of the Administrative Law Judge dated at Jacksonville, Florida, on 1 November 1985, is AFFIRMED.

J. C. IRWIN  
Vice Admiral, U. S. Coast Guard  
VICE COMMANDANT

Signed at Washington, D.C. this 14th day of October, 1986.